



Haryana Government Gazette

Published by Authority

© Govt. of Haryana

No. 28–2024] CHANDIGARH, TUESDAY, JULY 9, 2024 (ASADHA 18, 1946 SAKA)

PART III

Notifications by High Court, Advertisement, Notices and Change of Name etc.

HARERA GURUGRAM (CONSTITUTION OF MEDIATION AND DISPUTE RESOLUTION FORUM) REGULATIONS, 2024

Notification

The 5th July, 2024

No. 26/RERA GGM Regulations 2020.— In exercise of the powers conferred on it under section 85 of the Real Estate (Regulation and Development) Act, 2016 read with section 32(g) of the Real Estate (Regulation and Development) Act, 2016 and all others powers enabling it in that behalf, the Haryana Real Estate Regulatory Authority, Gurugram having considered it necessary to provide for measures to facilitate amicable mediation of disputes through dispute settlement forums; hereby makes the HARERA Gurugram (Constitution of Mediation and Dispute Resolution Forum) Regulations, 2024 as under in supersession of The Haryana Real Estate Regulatory Authority, Gurugram (Constitution of Mediation and Dispute Resolution Forum) Regulations, 2020 notified in the Haryana Government gazette *vide* No. 21/RERA GGM Regulations 2020 dated 17th of August, 2020 for constitution of Mediation and Dispute Resolution Forum.

1. Short Title, Object, Commencement and Extent:

- (a) These Regulations may be called the Haryana Real Estate Regulatory Authority, Gurugram (Constitution of Mediation and Dispute Resolution Forum) Regulations, 2024.
- (b) One of the functions of real estate regulatory authority as specifically provided in Section 32(g) is to take measures to facilitate amicable mediation and resolution of disputes between the promoters and the allottees through mediation forums set-up by the consumer/promoter's associations. In consonance with the above provision and enactment of The Mediation Act, 2023, a need was felt to restructure the existing regulations on the subject.
- (c) These Regulations shall be applicable throughout the jurisdiction of the Haryana Real Estate Regulatory Authority, Gurugram and shall come into effect from the date of their publication in the official Gazette.

2. In these Regulations, unless the context otherwise requires: -

- i. "Act, 2016" means The Real Estate (Regulation and Development) Act, 2016;
- ii. "Authority" means The Haryana Real Estate Regulatory Authority, Gurugram;
- iii. "Authorized representative" means a person duly authorized in writing by any of the parties to the mediation process;

- iv. "Mediation" includes a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, mediation or an expression of similar import, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as Mediator, who does not have the authority to impose a settlement upon the parties to the dispute;
- v. "Mediator" means a person who is appointed to be a Mediator, by the Authority to undertake mediation, Explanation.—Where more than one Mediator is appointed for a mediation, reference to a Mediator under these Regulations shall be a reference to all the Mediators;
- vi. "Mediation Communication" means communication made, whether in electronic form or otherwise, through— (i) anything said or done; (ii) any document; or (iii) any information provided, for the purposes of, or in relation to, or in the course of mediation, and includes a mediation agreement or a mediated settlement agreement;
- vii. "Mediated Settlement Agreement" means mediated settlement agreement under these Regulations;
- viii. "Participants" means persons other than the parties who participate in the mediation and includes advisers, advocates, consultants and any technical experts and observers.
- ix. "Party" means a party to a mediation agreement or mediation proceeding whose agreement or consent is necessary to resolve the dispute and includes their successors.
- x. "Pre-Litigation Mediation" means a process of undertaking mediation, for settlement of disputes prior to the filing of a complaint before the Authority under Section 31 of the Act, 2016.

3. **Appointment of Mediator -**

- i. The Authority shall appoint a Mediator/ Mediators, eligible and competent as per qualifications prescribed hereunder.
- ii. The Mediator shall normally be appointed for a period of one year from the date of appointment and his tenure shall be extendable from year to year at the discretion of the Authority up to the maximum age of 70 years.
- iii. The Mediator may be removed by the Authority at any time after giving a month's notice or payment of one month's honorarium in lieu thereof.
- iv. The Mediator shall be paid honorarium as decided by the authority on the basis of the qualification and experience of the Mediator.

4. **Qualifications of persons to be appointed as Mediator.**

The following persons can be appointed as Mediators under this Regulation:

- (a) Retired District & Sessions Judge/Additional District and Sessions Judge.
- (b) Legal practitioners with at least five years standing at the Bar at the level of the Supreme Court or seven years in the High Court or ten years in the District Courts (c) A person who has retired from the post of Member/Adjudicating officer of the Real Estate Regulatory Authority of any State.
- (d) Experts or other professionals in the field of real estate with at least fifteen years standing
- (e) Retired officers of the Central/State Government who have served at the post of Joint Secretary in the Central Government/Principal Secretary in the State Government or equivalent.
- (f) Persons who are trained/ experienced Mediators having at least five years experience in the field.

5. **Disqualifications of persons**

The following person shall be deemed to be disqualified for being appointed as Mediators:

- (a) any person who has been adjudged as insolvent or; Persons against whom criminal charges involving moral turpitude are framed by a criminal court and are pending or; Persons who have been convicted by a criminal court for any offence involving moral turpitude.
- (b) any person against whom disciplinary proceedings have been initiated by appropriate disciplinary authority which are pending or have resulted in a punishment.
- (c) any person who is interested or connected with the subject-matter of dispute(s) or is related to any one of the parties or to those who represent them, unless such objection is waived by all the parties in writing.
- (d) Any legal practitioner who has or is appearing for any of the parties in any of the proceedings pending before the Authority.
- (e) Such other categories of person as may be notified by the Authority.

6. Temporary disqualification:

- i. Every person appointed as a Mediator in a dispute or in a pre-litigation matter shall inform the Authority and all the parties to the dispute, if he is in anyway interested either directly or indirectly, in any of the party to the dispute or interested in the subject matter of dispute, at the earliest point of the time of his discovery of such interest and not to accept the relevant conflict/dispute for resolution. If he/she fails to inform/disclose such information, such a failure would amount to misconduct and disqualification.
- ii. The Authority shall on receipt of any information from any of the party or their representative that the Mediator appointed is interested or related to any of the party or interested in the subject matter of the dispute, appoint a new Mediator provided such information is substantiated with the prima facie evidence.
- iii. The Mediator who is temporarily disqualified in a particular matter, is not entitled to any remuneration in the said matter.

7. Duty of Mediators to disclose certain facts.

- i. The Mediator shall disclose any circumstance likely to give rise to a reasonable doubt as to his independence or impartiality in the matter wherein he is appointed to mediate.
- ii. Every Mediator shall from the time of his appointment and throughout continuance of the mediation proceedings, without delay, disclose to the parties, about the existence of any circumstance referred to in Clause (i).
- iii. The Mediator shall perform the duties of mediation between the parties and follow the procedure as mentioned hereunder.

8. Withdrawal of appointment –

Upon information furnished by the Mediator under Regulation 7 of these regulations or upon any other information received from the parties or other persons, if the Authority is satisfied that the said information has raised a reasonable doubt as to the Mediator's independence or impartiality, it may withdraw the appointment and replace him by another Mediator.

9. Procedure of mediation

- i. The parties shall ordinarily be present personally or through an authorized representative at the sessions or meetings a fixed by the Mediator. However, they may be represented by the counsel with the permission of the Mediator in such sessions or meetings.
- ii. The party not residing in India, may be represented by the authorized representative at the sessions or meetings through web/online proceeding. However, it may be represented by the counsel with permission of the Mediator in such sessions or meetings.
- iii. The Mediator shall follow the procedure laid hereinafter : -
 - (a) The Mediator shall assist the parties in an independent, neutral and impartial manner in their attempt to reach an amicable settlement of their dispute;
 - (b) The Mediator shall at all times be guided by the principles of objectivity and fairness and protect the voluntariness, confidentiality and self-determination of the parties, and the standards for professional and ethical conduct as may be specified;
 - (c) The mediation process may include the Mediator taking such measures as may be considered appropriate, taking into account the circumstances of the case, including meeting with parties or participants, jointly or separately, as frequently as deemed fit by the Mediator, both in order to convene the mediation, and during the mediation for the orderly and timely conduct of the process and to maintain its integrity;
 - (d) The Mediator shall not be bound by the Code of Civil Procedure, 1908, or the Indian Evidence Act, 1872;
 - (e) The Mediator shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all parties have to be present;
 - (f) The Mediator shall hold the mediation at the place prescribed by the Authority.
 - (g) The Mediator may conduct joint or separate meetings with the parties;
 - (h) Each party shall, two weeks before a session, provide to the Mediator a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect of those issues and all information reasonably required for the Mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties. However, in suitable/appropriate cases, the period may be curtailed/ increased at the discretion of the Mediator.

- (i) Each party shall furnish to the Mediator such other information as may be required by him in connection with the issues to be resolved.

10. Consequences of non-attendance of parties at sessions or meetings on due dates

If a party fails to attend two consecutive sessions or meetings notified by the Mediator on account of deliberate or willful act, the other party or the Mediator can seek assistance of the Authority/Bench, and in that case, the Authority may issue the appropriate directions having regard to the facts and circumstances of the case.

11. Administrative assistance

In order to facilitate the conduct of mediation proceedings, the Mediator shall be provided administrative assistance by Authority.

12. Offer of settlement by parties

Any party to the proceedings may, 'without prejudice', to the rights either party, offer a settlement to the other party at any stage of the proceedings, with notice to the Mediator.

13. Role of Mediator

The Mediator shall attempt to facilitate voluntary resolution of the dispute(s) by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute(s), emphasizing that it is the responsibility of the party to take decision which affect them; he shall not impose any terms of settlement on the parties.

14. Parties alone responsible for taking decision

The parties shall be made to understand that the Mediator only facilitates in arriving at a decision to resolve dispute(s) and that he will not and cannot impose any settlement nor does the Mediator give any assurance that the mediation will result in a settlement.

15. Time limit for completion of mediation

The Mediator shall endeavor to conclude the mediation process within a period of sixty days from the date of commencement of the mediation process. Provided that in case a request is made by any of the parties, the Mediator is of the view that extension of time is necessary or may be useful; the period of mediation may be extended up to a further period of sixty days.

16. Parties to act in good faith

All the parties shall commit to participate in the proceedings in good faith with the intention to settle the dispute(s), if possible.

17. Confidentiality

Any information whether oral or documentary received by the Mediator during the process of mediation is confidential and the Mediator shall not part with the same to anyone. Similarly, the proposals or admissions made by any party during the mediation process shall be confidential. Mediation proceedings shall not be recorded through any audio, video or mechanical process.

18. Privacy

Mediation sessions and meetings are private. Only the concerned parties or their counsel or power of attorney holders can attend. Other persons may attend only with the consent of the parties and with the permission of the Mediator.

19. Protection of action taken in good faith: The Mediator shall not be held liable for any act of commission or omission done by him during the mediation proceedings for civil or criminal action nor shall he be summoned by any party to the suit or proceeding to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

20. Communication between Mediator and the Authority

- i. In order to preserve the confidence of parties to the dispute and the neutrality of the Mediator, there should be no communication between the Mediator and the Authority, except as stated in clause (ii) and (iii) of this Regulation.
- ii. If any communication between the Mediator and the Authority is necessary, it shall be in writing and copies of the same shall be given to the parties or the constituted attorney or their counsel.
- iii. Communication between the Mediator and the Authority shall be limited to the communication by the Mediator: (a) about the failure of the party to attend the mediation proceedings; (b) about the consent of the parties; (c) regarding his assessment that the case is not fit for settlement through the mediation; (d) that the parties have settled the dispute(s).

21. Settlement Agreement

- i. Where an agreement is reached between the parties with regard to all the issues in the proceedings or some of the issues, the same shall be reduced into writing and signed by the parties or their authorized representative. If any counsel has represented the parties, the Mediator may obtain his signature also on the settlement agreement.
- ii. The agreement of the parties so signed shall be submitted to the Mediator who shall, with his recommendation under his signatures, forward the same to the Authority.
- iii. Where no agreement is arrived at between the parties, before the time limit stated in Regulation 15 of these regulations or where, the Mediator is of the view that no settlement is possible, he shall report the same to the Authority in writing.

22. Authority to fix a date for recording settlement and passing order

- i. On receipt of any settlement from the Mediator, the authority shall fix a date of hearing normally within 15 days. On such date of hearing, if the authority is satisfied that the parties have settled their dispute(s), it shall pass an order in accordance with terms thereof.
- ii. If the settlement agreement disposes of only certain issues arising in the proceedings, on the basis of which any order is passed as stated in Clause (i), the Authority shall proceed further to decide the remaining issues.

23. Ethics to be followed by Mediator

The Mediator shall:

- i. follow and observe these regulations strictly and with due diligence;
- ii. not to carry on any activity or conduct which could reasonably be considered as misconduct;
- iii. uphold the integrity and fairness of the mediation process;
- iv. ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process;
- v. satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;
- vi. disclose any interest or relationship likely to affect impartiality or which might seek an appearance of partiality or bias;
- vii. avoid, while communicating with the parties, any impropriety or appearance of impropriety;
- viii. be faithful to the relationship of trust and confidentiality imposed on the office of Mediator;
- ix. conduct all proceedings relating to the resolution of a dispute, in accordance with the applicable law;
- x. recognize that the mediation is based on principles of self-determination by the parties and natural justice and that the mediation process relies upon the ability of parties to reach a voluntary, undisclosed agreement.
- xi. maintain the reasonable expectations of the parties as to confidentiality, refrain from promises or guarantee of results.

24. Pre litigation mediation and settlement

- i. At the time of filing of complaint, the complainant or filing of reply the respondent, as the case may be, may file an application to opt for the mediation before adjudication by the authority.
- ii. The Authority may at any time refer a matter for mediation in case it is so decided in the interest of expeditious disposal of the matter.
- iii. The authority shall send notice to the 2nd party by email & registered post.
- iv. The second party shall convey its consent for mediation within two weeks of the receipt of the communication to the applicant by e-mail or through registered post.
- v. In case the mediation is initiated by the respondent – promoter, it shall deposit a sum of Rs. 1,000/- with the Authority along with the application for mediation. The said amount shall be refunded to the respondent in case the proposal for mediation is not accepted by the complainant.
- vi. Thereafter, the matter would be referred for mediation and the parties would be informed about the date, time and venue of the hearing.
- vii. Both the parties are expected to be present in person or through their authorized representative.

- viii. The Mediator would facilitate the resolution of dispute between the parties in an informal and amicable manner.
- ix. If the parties agree to any settlement, the consent agreement would be drawn, which would be signed by the parties and the Mediator and the same would be submitted to the Authority for passing formal order. Such formal order passed by the Authority would be binding on the parties.
- x. In case the parties fail to reach an amicable settlement, the mediation process would stand terminated and the parties would be at liberty to pursue their dispute before the Authority.
- xi. The parties shall not initiate, during the mediation proceedings, any arbitral or judicial proceedings in respect of a dispute which is the subject-matter of the application for mediation except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

25. The regulations namely, The Haryana Real Estate Regulatory Authority, Gurugram (Constitution of Mediation and Dispute Resolution Forum) Regulations, 2020 notified in the Haryana Government gazette *vide* No. 21/RERA GGM Regulations 2020 dated 17th of August, 2020 shall stand repealed from the date of notification of these regulations.

(Sd.)...,
Secretary
For Haryana Real Estate Regulatory Authority,
Gurugram.

[909-1]